**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

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| **UNITED STATES OF AMERICA**,<br>600 E Street, N.W., Suite 9500<br>Washington, D.C. 20530,<br><br>Plaintiff,<br><br>v.<br><br>**COMPUTER ASSOCIATES INTERNATIONAL, INC.**,<br>One Computer Associates Plaza<br>Islandia, New York 11788-7000,<br><br>and<br><br>**PLATINUM *TECHNOLOGY* INTERNATIONAL, *INC.***<br>Corporation Trust Center<br>1209 Orange Street<br>Wilmington, Delaware 19801<br><br>Defendants. | Case No. 1:01CV02062<br><br>JUDGE: Gladys Kessler<br><br>DECK TYPE: Antitrust<br><br>Date: 9/28/2001 |

**COMPLAINT FOR EQUITABLE RELIEF AND CIVIL PENALTIES**

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to obtain equitable relief and monetary relief in the form of civil penalties against Computer Associates International, Inc. ("CA") and Platinum *technology* International, *inc*. ("Platinum"), and alleges as follows:

## I.

## NATURE OF THE ACTION

1. CA and Platinum competed directly and aggressively in numerous software markets, including six mainframe systems management software markets. On March 29, 1999, CA and Platinum entered into an Agreement and Plan of Merger (the "Merger Agreement"), under which CA would acquire Platinum through a $3.5 billion cash tender offer. The acquisition was subject to Section 7A of the Clayton Act, 15 U.S.C. § 18(a), (commonly known as Title II of the Hart-Scott-Rodino Antitrust Improvement Act of 1976 ("HSR Act")), which prohibits certain acquisitions until a notification has been filed with the Department of Justice ("DOJ") and Federal Trade Commission ("FTC") and a prescribed waiting period has expired.

2. The Merger Agreement contained extraordinary "conduct of business" provisions that prevented Platinum from undertaking certain competitive activities during the HSR waiting period without CA's approval, including determining the prices and terms it would offer to its customers. Under the Merger Agreement, Platinum could not, without CA's prior written approval: offer discounts greater than 20% off list prices, vary the terms of customer contracts from an agreed-upon "standard" contract, offer computer consulting services over 30 days at a fixed price, or enter into contracts to provide year 2000 ("Y2K") remediation services. CA was "the sole arbiter" of whether to grant exceptions to these business restrictions during the HSR waiting period and installed a Division Vice President at Platinum headquarters to approve Platinum customer contracts. Platinum conceded in its May 14, 1999, SEC 10-Q filing that the "extremely tight restrictions" on its ability to conduct business without CA's consent "could have a severe detrimental effect" on its business.

3. In addition, during the period that the proposed merger was being reviewed pursuant to the HSR Act, CA reviewed competitively sensitive information about Platinum's customers and business strategy. CA also made day-to-day management decisions, including decisions related to the manner in which Platinum recognized revenues.

4. The Merger Agreement's prohibition on Platinum's offering discounts greater than 20% off the list price without CA approval deprived the defendants' customers in markets in which both CA and Platinum offered products and services of the benefits of free and open competition. This agreement and the defendants' actions to enforce it violated Section 1 of the Sherman Act.

5. The Merger Agreement and the parties' pre-consummation conduct also violated the HSR Act. The HSR Act is intended to give federal antitrust agencies a fair and reasonable opportunity to investigate certain mergers and to seek judicial intervention, if necessary, to prevent the acquisition of control and consummation of transactions that violate the antitrust laws. The Merger Agreement transferred to CA control of Platinum's essential competitive assets -- the right to independently set prices and other conditions of sale, and the right to decide whether or not to approve contracts proffered by the Platinum sales force -- before expiration of the mandatory HSR waiting period. In addition, CA exercised control over Platinum by reviewing Platinum's competitively sensitive business information and by making numerous day-to-day management decisions. The HSR Act prohibits this type of "gun jumping." CA and Platinum each violated the HSR Act and should be ordered to pay an appropriate civil penalty as provided for by the HSR Act.

## II.

## JURISDICTION, VENUE AND COMMERCE

6. This Complaint is filed, and these proceedings are instituted under Section 4 of the Sherman Act (15 U.S.C. § 4), to prevent and restrain CA from violating Section 1 of the Sherman Act (15 U.S.C. § 1) and under Section 7A of the Clayton Act (15 U.S.C. § 18a) to recover civil penalties for violations of the HSR Act. This Court has jurisdiction over the defendants and over the subject matter of this action pursuant to Section 7A(g) of the Clayton Act (15 U.S.C. § 18a(g)) and 28 U.S.C. §§ 1331 and 1337.

7. Venue is proper in this judicial district under 15 U.S.C. §22 and 28 U.S.C. § 1391 because defendants during all relevant time periods transacted business and were found here.

8. CA and Platinum are engaged in, and their sale of the software and services described in this Complaint substantially affected, interstate commerce.

## III.

## THE DEFENDANTS

9. CA is a Delaware corporation with its principal place of business in Islandia, New York. CA develops, markets, and supports software products for a variety of computers and operating systems, including systems management software for computers that use IBM's OS/390 and VSE operating systems ("mainframe computers"). Systems management software products are used to help manage, control, or enhance the performance of mainframe computers. CA sells its products throughout the United States, including the District of Columbia.

10. At all times relevant to this Complaint, Platinum was a Delaware corporation with its principal place of business in Oakbrook Terrace, Illinois. Platinum, like CA, was a leading vendor

of mainframe systems management software products. In addition to its software business, Platinum offered computer consulting services, including Y2K remediation services -- the re-engineering of software products to resolve possible computer failures from errors in calculating dates after the millennium date change. Platinum sold its products and services throughout the United States, including the District of Columbia.

11. Platinum became a wholly-owned subsidiary of CA following the consummation of the proposed merger on May 28, 1999.

## IV.

## BACKGROUND

### A. CA's Proposed Acquisition Of Platinum Would Have Substantially Lessened Competition In Six Mainframe Systems Management Software Markets

12. Prior to March 1999, Platinum aggressively competed with CA in the development and sale of numerous software products, including mainframe systems management software products. On March 29, 1999, CA and Platinum announced the Merger Agreement, pursuant to which CA would purchase all issued and outstanding shares of Platinum through a $3.5 billion cash tender offer. On March 31, 1999, CA filed the premerger Notification and Report Form required by the HSR Act, and Platinum filed its corresponding Notification on April 2, 1999.

13. After reviewing the parties' HSR filings, DOJ opened an investigation of CA's proposed acquisition of Platinum and concluded that Platinum was either the only substantial competitor, or was one of only a few substantial competitors, to CA in a number of mainframe systems management software product markets. On May 25, 1999, DOJ filed its Complaint, in *United States v. Computer Associates International Inc., et al.* (D.D.C. 1:99CV01318:GK),

alleging that the proposed merger would eliminate substantial competition in five relevant markets — tape management, job scheduling and reruns, and change management software for the OS/390 operating system, and job scheduling and reruns, and automated operations software for the VSE operating system. DOJ subsequently amended the Complaint to allege the proposed merger would eliminate substantial competition in a sixth mainframe systems management software market — job accounting, capacity planning and chargeback software (hereafter the "six mainframe systems software markets"). Simultaneously with the filing of the Complaint, the parties filed a proposed Final Judgment that required CA to divest, through a trustee, Platinum's various products and related assets in the six mainframe systems management software markets.

14. Upon filing of the Complaint and the proposed Final Judgment, the HSR waiting period was allowed to terminate on May 25, 1999. On May 28, 1999, CA announced that it had accepted for payment all validly tendered Platinum shares, and the parties thereafter consummated the merger.

B. The Merger Agreement Placed Specific Restrictions On Platinum's Ability To Engage In Business As A Competitive Entity Independent Of CA's Control

15. The Merger Agreement contained customary interim "conduct of business" provisions limiting Platinum's operations during the HSR waiting period, including restrictions on Platinum's rights to assume new debt or financing, issue new voting securities and sell assets. The Merger Agreement, however, also contained "conduct of business" provisions not normally found in merger agreements that severely restricted Platinum's ability to engage in business as a competitive entity independent of CA's control.

16. Section 5.1(j) of the Merger Agreement prohibited Platinum from engaging in the following business activities without CA's prior written approval:

> (ii) enter[ing] into any agreement pursuant to which [Platinum] will provide services for a term of more than 30 days at a fixed or capped price or otherwise pursuant to terms that are not consistent with agreements entered into by [Platinum] in the ordinary course of business, (iii) enter[ing] into any customer sale or license agreement with non-standard terms or at discounts from list prices in excess of 20%, . . . [and] (viii) enter[ing] into or amend[ing] any contract to provide for "year 2000" remediation services.

Thus, the Merger Agreement transferred to CA final authority to approve the prices and terms as well as the types of contracts that Platinum could enter. CA reserved for itself the right to be "the sole arbiter" of whether Platinum could offer discounts above 20% or non-standard terms.

17. In its May 14, 1999 SEC 10-Q filing, Platinum conceded that the Merger Agreement placed Platinum substantially under CA's control, stating:

> Also, the merger agreement imposes extremely tight restrictions on [Platinum's] ability to take various actions and to conduct its business without Computer Associates' consent. These restrictions could have a severe detrimental effect on [Platinum's] business.

18. CA further entered into consulting and non-compete agreements with Platinum's Chief Executive Officer, Chief Operating Officer, and Chief Financial Officer that included provisions providing that each may be held personally liable if Platinum failed to comply with the competitive restrictions of Section 5.1(j) of the Merger Agreement. CA's President and Chief Operating Officer included these provisions to give CA "some teeth" with which to enforce Section 5.1(j) of the Merger Agreement.

C. CA Assumed Control Of Platinum's Competitive Decision-Making Process

19. Prior to the Merger Agreement, Platinum in the ordinary course of business routinely offered substantial discounts for its software products and computer consulting services. For software products, Platinum typically gave discounts over 20% off list prices, and discounts of up to 80% were not uncommon where Platinum faced significant competition, was attempting to displace CA's or other competitors' products, or was using the customer site to test a new product. Platinum also commonly discounted computer consulting services by more than 20% and routinely offered steep discounts or free consulting services related to the installation or implementation of Platinum software products where Platinum was displacing CA as the incumbent software vendor.

20. As a result of the provisions of the Merger Agreement, Platinum changed its ordinary contract approval procedures to ensure that the company operated in accordance with the limitations imposed by the Merger Agreement and that any exceptions were approved by CA. Under the new procedures, Platinum sales representatives were required to complete contract pre-approval forms. The forms identified the customer, the products or services offered, list price, discount, and a justification for the discount. The forms also contained a section for CA to note its approval. Platinum maintained a database to track contracts in the pre-approval process that contained the customer name, price, discount, non-standard terms, and whether CA had approved or rejected the contract.

21. For proposed contracts that did not conform to the business restrictions imposed by Section 5.1(j) of the Merger Agreement (for example, a contract proposing a discount greater than 20%), the Platinum sales representatives were required to submit the pre-approval forms and

supporting documents (e.g., the contract and/or statement of work) to a contract review and approval team located at Platinum's Oakbrook Terrace headquarters. The team was composed of two Platinum employees and a CA Division Vice President. The CA Vice President could approve or reject the contract or request additional information from the Platinum sales force. On several occasions, the CA Vice President consulted with other CA executives before approving or rejecting a proposed contract. CA exercised control over Platinum's customer contract process through this approval authority.

22. On March 30, 1999, the day after the merger announcement, Platinum's President, by email, notified senior management that Platinum would have to change its normal contracting and discounting practices to comply with Section 5.1(j) of the Merger Agreement. He warned:

> The point is that we will make it clear that all deals world-wide are to be negotiated at no more than 20% off current list. Any discount greater than that will not necessarily get turned down but I'm going to act like it will until we see the specific paperwork and approve it. If that means an impact on our business then we will see, but this is serious and there will be no exceptions what-so-ever to the revue process. We can absolutely NOT do what we have been doing. No deals will be accepted, commissions will not get paid, customer contracts will NOT be honored and who ever does it will be immediately terminated.

Platinum sales representatives received similar warnings and were advised that discounts above 20% required CA approval.

23. Upon receiving notice of the new discounting restrictions and contract approval procedures, some Platinum sales representatives modified their normal discounting practices and kept discounts below the levels on which CA and Platinum had agreed, including bids where the sales representative would have otherwise recommended, and Platinum would likely have approved, discounts above agreed-upon levels.

24. Other Platinum sales representatives submitted, under the newly established process, proposed contracts seeking exceptions to the Section 5.1(j) limitations, for example, discounts greater than 20%. However, these requests were subject to review and approval by CA. In some cases, where CA found the justification given to support an exception was insufficient, CA requested further explanation or required the offer to be modified before granting approval.

D. CA Controlled Other Aspects Of Platinum's Business

25. CA, during the HSR waiting period, had sufficient control over Platinum's operations that it was able to systematically collect competitively sensitive information relating to Platinum's competitive bids, including the name of the customer, products and services offered, list price, discount, and the justification for any discount. Some of Platinum's competitively sensitive bid information, including proposed prices and discount levels, was provided to CA employees involved in the competitive bid process.

26. In addition, CA changed Platinum's method of booking revenues and reversed revenues previously recognized for customer contracts. Finally, CA exercised approval authority over Platinum's participation at industry trade shows by canceling Platinum's participation at a trade show where Platinum would have presented its products and sought future business.

## V.

## FIRST OFFENSE: VIOLATION OF SECTION ONE OF THE SHERMAN ACT

27. The allegations of ¶¶ 1-26 of this Complaint are re-alleged and incorporated by reference here with the same force and effects as though set forth here in full.

28. Up until the time the proposed merger was consummated on May 28, 1999, CA and Platinum were direct horizontal competitors in the United States for the sale of products in at least six mainframe systems software markets. The sale of each of these products in the United States is a relevant antitrust market.

29. Beginning on March 29, 1999, and continuing until May 25, 1999, CA and Platinum engaged in a contract, combination or conspiracy that was unlawful under Section 1 of the Sherman Act (15 U.S.C. § 1).

30. Pursuant to their unlawful agreement, CA assumed operational control over important aspects of Platinum's competitive activities. Specifically, the defendants agreed that Platinum would not offer its customers in the six mainframe systems software markets discounts greater than 20% off the list price unless CA agreed in writing to a larger discount.

31. In order to effectuate this agreement, the defendants did the following, among other things:

(a) Platinum substantially modified its ordinary discounting and contracting practices so that customer contracts offering software and services discounts greater than 20% off list were not sent to customers until CA reviewed and approved them;

(b) CA installed a Division Vice President at Platinum's headquarters where he reviewed and approved Platinum customer contracts; and

(c) CA collected and disseminated within CA competitively sensitive data relating to Platinum's proposed customer contracts, including the name of the customer, products and services offered, list price, discount, and the justification for any discount.

32. The defendants' agreement to restrict Platinum's discounting practices and conduct during the relevant time period in furtherance thereof had the effects, among others, of restraining price and other competition between the defendants for the sale of products in the six mainframe systems software markets. This denied customers the benefits of free and open competition. CA is likely to engage in similar unlawful conduct unless the relief requested is granted.

33. The restriction on Platinum's right to discount included in the Merger Agreement was extraordinary and not reasonably necessary to achieve any legitimate business activity.

## VI.

## SECOND OFFENSE: VIOLATION OF 7A OF THE CLAYTON ACT

34. The allegations of ¶¶ 1-26 of this Complaint are re-alleged and incorporated by reference here with the same force and effects as though set forth here in full.

35. The HSR Act provides that if as a result of an acquisition an acquiring person would hold voting securities or assets beyond certain thresholds, the acquiring person, and in most circumstances the acquired person, must file preacquisition Notification and Report Forms with the DOJ and FTC. In addition, the HSR Act requires that the merging parties observe a designated waiting period before the acquiring person can acquire, directly or indirectly, the voting securities or assets. The HSR Act thus prohibits consummation of the merger transaction prior to the expiration of the waiting period. The purpose of the waiting period is to give the antitrust agencies an opportunity to investigate proposed transactions and to determine whether

to seek an injunction to prevent the acquisition of control and consummation of transactions that violate the antitrust laws.

36. CA's acquisition of Platinum was subject to the HSR Act's notification and waiting requirements. The HSR waiting period commenced on March 31, 1999, and expired on May 25, 1999.

37. CA, upon contracting to acquire Platinum, exercised unlawful control over Platinum's business in violation of the HSR Act by:

(a) installing CA employees at Platinum headquarters to review and approve customer contracts;

(b) restricting Platinum's right to set discounts for software products and consulting services without CA approval;

(c) limiting Platinum's right to negotiate terms of customer contracts without CA approval;

(d) limiting Platinum's right to enter into fixed-price contracts without CA approval;

(e) limiting Platinum's right to offer Y2K remediation services without CA approval;

(f) collecting and disseminating within CA competitively sensitive information, including the identity of Platinum's prospective customers and the specific price, discounts and contract terms offered to each customer; and

(g) making day-to-day management decisions, including decisions related to recognition of revenue and participation at industry trade shows.

38. CA and Platinum were continuously in violation of the HSR Act during the period

beginning on March 29, 1999, and ending on May 25, 1999, a total of 58 days. Each defendant is liable to the United States for a maximum civil penalty of $11,000 per day.

## VII.

## REQUEST FOR RELIEF

The United States requests:

1. That the Court adjudge and decree that the defendants engaged in an agreement, combination or conspiracy that was unlawful under Section 1 of the Sherman Act.

2. That CA, its officers, directors, agents, employees, subsidiaries and successors, and all other persons acting or claiming to act on its behalf, be enjoined, restrained and prohibited for a period of 10 years from, in any manner, directly or indirectly, engaging in any other agreement, combination or conspiracy have the same effect as the alleged violation;

3. That the Court adjudge and decree that CA's acquisition of Platinum was in violation of the HSR Act and that CA and Platinum were in violation of the HSR Act each day of the period beginning on March 29, 1999, and ending on May 25, 1999;

4. That CA and Platinum each be ordered to pay to the United States a civil penalty in the amount of $638,000;

5. That the United States have such other relief as the nature of the case may require and the Court may deem just and proper; and

6. That the United States recover its costs of this action.

Dated: September 28, 2001


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